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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/692,064 | 10/23/2003 | David F. Davenport | 03880-P0001B | 7267 |
| 24126 | 7590 | 03/29/2006 | EXAMINER | |
| ST. ONGE STEWARD JOHNSTON & REENS, LLC | | | FLOOD, MICHELE C | |
| 986 BEDFORD STREET | | | ART UNIT | |
| STAMFORD, CT 06905-5619 | | | PAPER NUMBER | |

1655

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/692,064 | Applicant(s) DAVENPORT ET AL. | |
| | Examiner Michele Flood | Art Unit 1655 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-45 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to a nutraceutical composition comprising an oil cake component, a glucosamine component, an acid component, a mineral component, a vitamin component and a functional food component wherein each constituent is present in an effective proportion such that when administered to a mammal in an effective amount the nutraceutical composition is effective improve fertility, classified in class 424, subclass 439.
- II. Claims 12 and 13, drawn to a nutraceutical composition comprising constituents (a) – (k), classified in class 424, subclass 725.
- III. Claims 14-17, drawn to a nutraceutical composition comprising a glucosamine component, and a nutrient component wherein each constituent is present in an effective proportion such that when administered to a mammal in an effective amount the nutraceutical composition is effective improve fertility, classified in class 514, subclass 62.
- IV. Claims 18-21, drawn to a nutraceutical composition comprising a glucosamine component present in an effective proportion such that when administered to a mammal in an effective amount the nutraceutical

composition is effective to improve fertility, classified in class 514, subclass 62.

- V. Claims 22-34, drawn to a method for improving fertility in a mammal comprising the step of administering to the mammal gametogenesis promoting effective amount of a nutraceutical composition comprising the constituents (a) – (f), classified in class 424, subclass 439.
- VI. Claims 35-38, drawn to a therapeutic composition for the treatment, repair or increased production of gametocytes in mammals comprising therapeutic quantities of glucosamine and salts thereof in combination with a nutrient component for effectively promoting fertility in mammals in need thereof, classified in class 514, subclass 62.
- VII. Claims 39-42, drawn to a method for improving fertility in a mammal comprising the step of administering to the mammal gametogenesis promoting effective amount of a nutraceutical composition comprising a glucosamine component in an effective proportion, classified in class 514, subclass 62.
- VIII. Claims 43-45, drawn to a method for improving fertility in a mammal comprising the step of administering to the mammal, conception, implantation or gestation promoting effective amount of a nutraceutical composition comprising glucosamine component in an effective proportion, classified in class 514, subclass 62.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, II, III, IV and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the five different groups are directed to five different compositions comprising different ingredients, having different functional effects depending on the effective amounts of the ingredients contained therein.

Inventions V, VII, and VIII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the three different groups are directed to three different methods of improving fertility comprising the administration of different compositions comprising different ingredients wherein the amounts of the ingredients contained therein have different modes of operation in producing different functional effects.

Inventions I-II and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed can be practiced with another materially different product, as evidenced by the claims themselves. Moreover, Campbell et al. teaches a method for improving fertility in a mammal comprising the administration of effective amounts of betaine, in U. S. Patent 6,183,769 B1.

Inventions IV and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed can be practiced with another materially different product, as evidenced by the claims themselves. Moreover, Campbell et al. teaches a method for improving fertility in a mammal comprising the administration of effective amounts of betaine, in U. S. Patent 6,183,769 B1.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

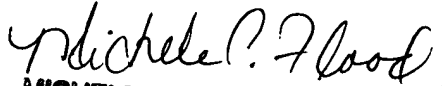
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is 571-272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michele Flood
Primary Examiner
Art Unit 1655

MCF
March 20, 2006


MICHELE FLOOD
PRIMARY EXAMINER